

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DIANE RESTANI,) Case No. 09-3465 SC
)
7 Plaintiff,) ORDER GRANTING DEFENDANTS'
8) MOTION FOR SUMMARY JUDGMENT
v.)
9)
10 UAL CORPORATION; UNITED AIR LINES,)
INC.,)
11 Defendants.)
12)

13 Diane Restani ("Restani") has filed a petition to set aside an
14 arbitration award that found her discharge as an employee of United
15 Air Lines, Inc., to be "just and proper." Docket No. 1
16 ("Petition"). United Air Lines, Inc., and its parent company UAL
17 Corporation (collectively, "UAL") have filed a Motion for Summary
18 Judgment ("Motion"). Docket No. 12. Restani has filed an
19 Opposition, Docket No. 21, and UAL has submitted a Reply, Docket
20 No. 27. Having considered the papers submitted by both parties,
21 the Court concludes that this matter is suitable for decision
22 without oral argument. The Court hereby GRANTS UAL's Motion and
23 DENIES Restani's Petition for the reasons stated below.

24 Restani was employed by UAL as a storekeeper, and was a member
25 of the International Association of Machinists and Aerospace
26 Workers, District Lodge 141 ("Union"). Pet. ¶¶ 2-4. Her
27 employment was therefore governed by a Collective Bargaining
28 Agreement between the Union and UAL. Id. ¶ 3; Rosinia Decl. Ex. A

1 ("CBA").¹ The CBA requires grievances be resolved by final and
2 binding arbitration before the Systems Board of Adjustment ("SBA")
3 in accordance with the Railway Labor Act ("RLA"). See CBA art.
4 XVIII.H, at 52-55.

5 Restani's employment was terminated after UAL concluded that
6 she had attempted to defraud the company by seeking reimbursement
7 for a pair of safety shoes after she had apparently returned the
8 shoes to the store at which she purchased them. See Pet. Ex. 1
9 ("SBA Opinion") at 5-6. The Union claimed that her discharge was
10 not "just and proper," and pursued the grievance procedure outlined
11 in the CBA. Id. The Union claimed that UAL denied Restani her
12 contractual right to Union representation during the investigation
13 for fraud, that Restani had been singled out, and that UAL lacked
14 just cause for the termination. Id. at 9-16. The SBA arbitrator
15 issued a sixteen-page opinion concluding that Restani's termination
16 had been just and proper. Id. at 16. Restani now claims that the
17 arbitrator's decision was "based on manifest disregard for the
18 law." Pet. ¶ 9.

19 The RLA distinguishes between disputes that seek to create
20 contractual rights ("major disputes") and those that seek to
21 enforce them ("minor disputes"). Consol. Rail Corp. v. Ry. Labor
22 Executives' Ass'n, 491 U.S. 299, 302 (1989). In other words, a
23 dispute is deemed "minor" if it grows "out of grievances or out of

24 ¹ Richard Rosinia, Senior Staff Advisor - Arbitration for UAL,
25 submitted two declarations in support of the Motion. Docket Nos.
26 13, 24. The two declarations appear to be identical except that
27 the second declaration was submitted in a text-searchable format.
The Court notes that Restani has objected to UAL's submission of
the CBA, Docket No. 20, but finds no basis for the objection. The
CBA submitted by UAL appears to be complete, and as Senior Staff
Advisor for Arbitrations, Rosinia is in a good position to
authenticate the document. Restani's objection is OVERRULED.

1 the interpretation or application of agreements concerning rates of
2 pay, rules, or working conditions." ² Id. at 303. Minor disputes
3 are subject to compulsory and binding arbitration before the SBA,
4 which has exclusive jurisdiction over the dispute, and operates
5 according to procedures that can be set out by a CBA. See id.;
6 Mitchell v. Cont'l Airlines, Inc., 481 F.3d 225, 230-31 (5th Cir.
7 2007). As the Ninth Circuit has stated,

8 The scope of judicial review of adjustment board
9 awards under the RLA is among the narrowest known
10 to the law. The RLA allows courts to review
11 adjustment board decisions on three specific
12 grounds: (1) failure of the board to comply with
13 the RLA; (2) failure of the board to conform, or
14 confine itself to matters with[in] its
15 jurisdiction; and (3) fraud or corruption.

16 English v. Burlington N. R.R., 18 F.3d 741 (9th Cir. 1994)
17 (citations and internal quotation marks omitted); see also
18 Mitchell, 481 F.3d at 231 ("Absent one of these grounds, an
19 adjustment board's findings and orders are binding and conclusive
20 as to the parties.").

21 Restani claims that the Ninth Circuit has recently added

22 ² Contrary to Restani's contention, Opp'n at 5, this distinction is
23 not based on the price of the shoes for which she is alleged to
24 have sought reimbursement. Restani misreads the holding of
25 Consolidated Rail, which noted that the framework for
26 distinguishing between major and minor disputes may in some
27 instances allow the party that initiates the dispute the power to
28 frame the dispute as either type. 491 U.S. at 305. It recognized
the "danger in leaving the characterization of the dispute solely
in the hands of one party." Id. It therefore allowed courts to
reject the initiating party's characterization where its position
is founded on "insubstantial grounds." Restani seems to suggest
that because the shoes in question were not expensive, this is a
minor dispute. Opp'n at 5. While her rationale is incorrect, she
is correct that this represents a minor dispute under the RLA
framework. There is no question that this dispute rests solely on
the interpretation and application of an existing contract. The
Court rejects as baseless Restani's argument that this
classification deprives the arbitrator of jurisdiction. Opp'n at
5.

1 another basis for reviewing an arbitrator's award: "manifest
2 disregard for the law." Opp'n at 2. Restani cites Comedy Club,
3 Inc. v. Improve West Assocs., 553 F.3d 1277 (9th Cir. 2009). Even
4 though this decision addressed only the standard for reviewing an
5 arbitrator's award under the Federal Arbitration Act -- as opposed
6 to the RLA -- the Court will assume, arguendo, that it can review
7 the arbitrator's award for manifest disregard of the law. The
8 Court makes this assumption because "manifest disregard" is the
9 basis for the only substantial argument offered by Restani, and it
10 can be quickly dismissed.

11 Restani argues that the arbitration award was granted in
12 manifest disregard for the law because her attempted fraud was not
13 "material." Opp'n at 2-4. She cites California case law that
14 references the elements of fraud, which include the
15 misrepresentation or suppression of a "material fact." Id. at 3.
16 She then claims that "two pairs of \$92.01 shoes are not material
17 under California law." Id. This argument is specious on its face.
18 Under the law that Restani cites, the term "material" clearly
19 refers to the centrality of the facts contained in a
20 misrepresentation or omission, with respect to the purpose of the
21 communication. See Melanson v. United Airlines, 931 F.2d 558, 563
22 (9th Cir. 1991). This does not suggest that an act of fraud is any
23 less an act of fraud simply because the amount at issue was small.
24 That the shoes cost only \$92.01 is irrelevant. The arbitrator had
25 ample legal basis to conclude, based on uncontested evidence, that
26 Restani "fraudulently submitted receipts to the company for a pair
27 of work shoes she had purchased and then returned." SBA Opinion at
28 16. Even assuming that this Court could overturn the arbitrator's

1 decision for manifest disregard of the law, there would be no basis
2 for doing so.

3 Restani also claims that the United Rules of Conduct only
4 permit discharge in the absence of mitigating factors, and she
5 faults the arbitrator for not sufficiently considering mitigating
6 factors presented by her case.³ Opp'n at 4. She claims that her
7 long history of employment and otherwise clean disciplinary record
8 serve as mitigating factors. *Id.* The Court notes that the
9 arbitrator clearly considered these factors. The arbitrator noted
10 these factors in his Opinion, and concluded that "they are not
11 sufficient to overcome the seriousness of [Restani's] conduct."
12 SBA Opinion at 16. Moreover, it was the proper role of the
13 arbitrator to interpret this Rule of Conduct, and this Court may
14 not second guess the arbitrator. *See United Paperworkers Int'l*
15 *Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987) ("[T]he parties having
16 authorized the arbitrator to give meaning to the language of the
17 agreement, a court should not reject an award on the ground that
18 the arbitrator misread the contract.").

19 For the foregoing reasons, this Court GRANTS UAL's Motion and
20 DENIES Restani's Petition.

21 IT IS SO ORDERED.

22
23 Dated: October 19, 2009


24 UNITED STATES DISTRICT JUDGE

25
26 ³ The entirety of the United Rules of Conduct is not before the
27 Court. However the relevant provision was cited by the arbitrator.
28 Restani was terminated for violating Rule of Conduct # 18, which
reads as follows: "Violations of one or more of the following rules
will result in discharge unless mitigating factors are considered
applicable: . . . 18. Defrauding or attempting to defraud the
Company." SBA Opinion at 7.